

1. OFOs are Not Discriminatory.

Staff's principal concern appears to be that, from Staff's theoretical perspective, OFOs could potentially be discriminatory because they would apply to Customer Select shippers only, and not to all shippers on the Nicor Gas system. As explained below, however, analogous tariff provisions *already* apply to those other shippers, including provisions entitled "Limitation on the Rendering of Gas Service," "Priority of Supply," and critical day provisions, which help to ensure that all shippers share equitably in the costs of correcting operational problems. Moreover, to the extent that these other tariff provisions operate somewhat differently than OFOs, those differences are entirely reasonable in light of the differences between Customer Select customers and other transportation customers.

a. OFOs Could Not and Would Not Shift all Costs to Customer Select Suppliers.

Staff argues that OFOs could be used by the Company to shift all the costs of alleviating operational problems for the entire system onto Customer Select suppliers. Staff Initial Br. at 52-53. Staff's concern, however, is based on utterly improbable scenarios, which assume that the Company would and could solve system operational problems by imposing OFOs on Customer Select suppliers, without simultaneously taking its own actions and requiring similar actions by suppliers of other transportation customers. See Staff Initial Br. at 51-54. This assumption is erroneous for at least four reasons.

pro-rata shifts in nominations would be inefficient (ICC Staff Ex. 1.0, p. 11-12), and (2) "informational problems" exist with OFOs as proposed by the Company (ICC Staff Ex. 1.0, pp. 12-13).

First, as the interstate pipeline delivery point operator, Nicor Gas must abide by operational flow orders issued by interstate pipelines that limit the flexibility of deliveries to the Company's receipt points. Moreover, the Company is subject to significant daily and monthly penalty charges for failure to operate according to applicable pipeline tariff provisions. Consequently, the Company arranges for and dispatches its supply daily to avoid operational problems. Nicor Gas Ex. C, p. 4 (Gilmore Surrebuttal). The Company, therefore, has every incentive to operate its system prudently, and not to sit back and hope that OFO orders directed at Customer Select suppliers alone would solve the system's operational problems.

Second, with respect to delivery point limitations, it would be operationally ineffective to limit Customer Select volumes without also limiting other deliveries to the Nicor Gas city-gate. Nicor Gas Ex. C, p. 6 (Gilmore Surrebuttal). As Staff witness Iannello conceded, the Nicor Gas city-gate is very liquid. Nicor Gas Cross Ex. 1 (CCSI 18); see also Nicor Gas Ex. C, p. 6 (Gilmore Surrebuttal). This means that volumes nominated and scheduled for delivery to Nicor Gas via interstate pipelines often change title prior to final confirmation. Consequently, if Nicor Gas issued an OFO limiting deliveries by suppliers serving Customer Select customers at specified receipt points, without also limiting deliveries by suppliers serving other customers, the inevitable result would be that the gas would simply change title but would still be delivered to the same receipt point. Nicor Gas Ex. C, p. 6 (Gilmore Surrebuttal). In other words, under this hypothetical circumstance, the supplier serving Customer Select customers subject to the OFO would just sell or trade the gas at that receipt point to a non-Customer Select supplier, who

would then have the gas delivered to the same receipt point.¹⁵ Tr. 59. In short, Mr. Iannello's contention that the Company would or could use OFOs to place the burden of solving system operational problems exclusively on Customer Select customers is incorrect because, among other reasons, it would not work. To correct problems effectively at specific receipt points, the Company would *have* to place limitations on all shippers, and not just Customer Select shippers.¹⁶ Tr. 59-60.

Third, in Rider 16, the Company has committed to providing the Commission with a detailed report each time an OFO is issued, including the situation that gave rise to the OFO, the actions suppliers and the Company were required to take, the suppliers affected by the OFO, non-performance charges assessed, and the costs associated with the Company's actions. Nicor Gas Ex. D, Schedule AEH-4, p. 10 of 12 (Harms Direct). This unusual step -- taken at Staff's request -- ensures that Staff and Customer Select suppliers can (and presumably will) carefully scrutinize every instance in which the Company issues an OFO.¹⁷ Nicor Gas Ex. B, pp. 10-11

¹⁵ On an even more fundamental level, interstate pipeline shippers may sell gas to marketers that serve both Customer Select and other transportation customers. If Nicor Gas limited deliveries of only Customer Select suppliers, it would be no more than an accounting matter for the marketer to deem the gas at the restricted delivery point to be intended for a non-Customer Select customer.

¹⁶ For this reason, Staff's complaint (Init. Br. at 54) that no provision of the Company's tariff *requires* it to impose limitations on other shippers when it imposes an OFO is irrelevant. Further, as discussed below, the scrutiny to which each OFO will be subjected renders Staff's complaint moot.

¹⁷ Many or most of the Customer Select suppliers are sophisticated gas marketers that are affiliates of public utilities or national marketers. For example, in addition to Nicor Gas' affiliate, Customer Select suppliers include affiliates of Unicom, Wisconsin Public Service, and Peoples Energy. See CUB Cross Ex. 2 (CUB 2.22). These suppliers could be expected to challenge any perceived inequity in treatment under the Company's tariffs.

(Gilmore Rebuttal). This degree of scrutiny of the Company's actions with respect to OFOs should dispel any credible concern that Nicor Gas would use OFOs to impose costs unfairly on Customer Select suppliers alone or to shift costs improperly.

Fourth, if the Commission were to reject the proposed OFO provision and the corresponding Rider 6 changes -- as Staff advocates -- the costs of correcting operational problems would be born by sales customers alone. Nicor Gas Ex. B, p. 11 (Gilmore Rebuttal). This result is clearly much less equitable than the Company's proposal.

In sum, Staff's claims (Init. Br. at 52-54) that the Company could or would impose OFOs in a discriminatory manner to impose all costs of maintaining system reliability on Customer Select suppliers is baseless and should be rejected.

b. The OFO Non-Performance Charge is a Reasonable Penalty, not a Cost-Based Charge.

Under the proposed OFO provisions in Rider 16, suppliers who deliver more or less than the Required Daily Delivery Range are subject to a penalty, identified as the Operational Flow Order Non-Performance Charge. Specifically, each therm of underdelivery of the Required Daily Delivery Range would be sold by the Company to the group at a charge of 200% of the high price of gas as reported for Chicago city-gate deliveries, and each therm of overdelivery would be purchased by the Company from the group at 50% of the low price of gas as reported for Chicago city-gate deliveries. Nicor Gas Ex. D, Schedule AEH-4, p. 7 of 12 (Harms Direct), Tr. 112-113. Staff objects to the level of these penalties, on the ground that Nicor Gas did not provide any "cost support for or analysis of the charge." Staff Init. Br. at 55.

As Mr. Harms testified, however, these penalties are not intended to be cost-based. Rather, they are intended to create an economic incentive for suppliers to comply with OFOs.

Tr. 113. This is so because the purpose of OFOs is not to collect penalties, but to shape supplier behavior in order to prevent or ameliorate operational problems. Nicor Gas Ex. A, p. 7 (Gilmore Direct). As Mr. Harms explained, in the Company's judgment, the gas purchase and sale prices proposed in Rider 16 for OFO Non-Performance Charge would create an adequate economic incentive for suppliers to conform to OFOs. Tr. 113.

Both this Commission and the Illinois appellate court have held that a penalty charge intended to deter specific actions by transportation customers need not be cost based. In Nicor Gas' most recent rate case, for example, the Commission held that a charge for the unauthorized use of gas by transportation customers "is not, and need not be, cost based" because its "sole purpose is to deter" undesirable actions by transportation customers. *Northern Illinois Gas Co.*, Docket No. 95-0219, 1996 Ill. PUC Lexis 204, *146 (April 3, 1996). Similarly, in affirming an unauthorized use charge by Peoples Gas and North Shore Gas Company, the appellate court "explicitly recognize[d] the Commission's authority to approve a non-cost-based" penalty charge. *Abbott Laboratories, Inc. v. Commerce Comm'n*, 289 Ill. App. 3d 705, 711, 712-13, 682 N.E.2d 340, 347-48 (1st Dist. 1997).

In short, the OFO Non-Performance Charge is a penalty for delivering too much or too little gas to the Nicor Gas system during an OFO, and, under well-established law, need not be cost-based. Neither Staff nor any other party presented testimony proposing any other level of OFO Non-Performance Charge. The Company's proposed OFO Non-Performance Charge is reasonable and should be approved.

c. Fundamental Differences Among the Company's Transportation Tariffs Support the Customer Select OFO Provision.

Staff further argues that OFOs and the OFO Non-Performance Charge would be discriminatory because they would apply only to Customer Select suppliers and not to suppliers of other transportation customers. Staff Init. Br. at 55-57. It is well-established that the Act expressly authorizes a utility to establish different classes of service, and prohibits only *unreasonable* differences in rates and charges, and not all differences. *Citizens Utils. Co. v. Commerce Comm'n*, 50 Ill. 2d 35, 46, 276 N.E.2d 330, 336 (1971); *see also Wedron Silica Co. v. Commerce Comm'n*, 387 Ill. 581, 57 N.E.2d 349 (1944); 220 ILCS 5/9-102; 220 ILCS 5/9-241. Contrary to Staff's assertion, Mr. Gilmore clearly explained why this difference is reasonable and not discriminatory. See Nicor Gas Exs. B, pp. 5-7 (Gilmore Rebuttal) and C, pp. 2-3 (Gilmore Surrebuttal).

As Mr. Gilmore explained, there are two basic types of OFOs: (1) orders that would limit the volume of gas that the Company would confirm at a pipeline delivery point, and (2) orders that would increase or decrease the Required Daily Delivery or the Required Daily Delivery Range of Customer Select suppliers. Nicor Gas Ex. B, p. 12 (Gilmore Rebuttal).

First, with respect to OFOs that would limit the volume of gas at receipt points, Nicor Gas has comparable authority applicable to all transportation customers through the "Limitations on the Rendering of Gas Service" and the "Priority of Supply" provisions of the Terms and Conditions in its tariff. Nicor Gas Ex. C, pp. 4-5 (Gilmore Surrebuttal). And, as explained above and in Mr. Gilmore's testimony (Nicor Gas Ex. C, pp. 3, 6), the Company would not issue a Customer Select OFO limiting volumes at specific receipt points without simultaneously

imposing limitations on other transportation customers under the Terms and Conditions of its tariff.¹⁸

Second, OFOs that would alter the Required Daily Delivery or Required Daily Delivery Range of Customer Select suppliers are neither necessary nor appropriate for non-Customer Select suppliers. This is because of the fundamental differences between the Customer Select transportation program -- which is specially designed for small volume customers -- and the Company's other transportation tariffs, which are generally designed for larger industrial and commercial customers. Customer Select suppliers have a high degree of certainty in their daily nominations, because the Company gives them a Required Daily Delivery volume, as well as considerable daily nomination flexibility by virtue of the new Required Daily Delivery Range. Even on a monthly basis, Customer Select suppliers are permitted to carry forward significant imbalances between usage, storage and total Required Deliveries to a future month. See Nicor Gas Exs. A, pp. 2-7 (Gilmore Direct) and B, pp. 6, 13 (Gilmore Rebuttal). Other transportation customers do not have comparable arrangements. Rather, they are responsible for daily

¹⁸ Staff appears to be concerned that non-Customer Select suppliers would not be subject to the OFO non-performance charges that could be imposed on Customer Select suppliers who do not conform to the OFO. See Staff Init. Br. at 55. In fact, the limitations on nominations at restricted delivery points are self-executing because suppliers are not able to bring in more gas than permitted under the OFO or other limitation. For Customer Select suppliers, OFO non-performance charges could be incurred for over- or underdelivery of the Required Daily Delivery Range. Nicor Gas Ex. D, Schedule AEH-4, p. 7 of 12. They incur no penalties, however, for use in excess of the gas they deliver to the system. While non-Customer Select suppliers are not subject to the OFO non-performance charge, they are subject to penalties for unauthorized use of gas on critical days. See e.g., Ill. C.C. No. 16, 2nd Revised Sheet No. 26. This difference in penalty structure reflects the fundamental difference between the Customer Select and non-Customer Select transportation programs.

balancing of usage, storage and gas deliveries.¹⁹ Nicor Gas Ex. B, p. 6 (Gilmore Rebuttal). This fundamental difference in responsibility makes OFOs limiting Required Daily Delivery volumes or Required Daily Delivery Ranges inapposite in the context of non-Customer Select transportation customers. *Id.*

Third, as Mr. Gilmore explained, in proposing an expanded Customer Select program, Nicor Gas carefully balanced the features that make the program attractive to small volume customers -- i.e., the combination of certainty and increased flexibility in daily nominations -- with the operational risks to its distribution system from expansion. The Company concluded that the program could safely be expanded to all customers, provided that Nicor Gas had a means of adjusting system deliveries if the mechanics of Customer Select resulted in deliveries that were not consistent with safe and reliable system operations. Nicor Gas Ex. B, p. 13 (Gilmore Rebuttal). The OFO section of Rider 16 provides that means. Thus, while OFOs would apply only to Customer Select suppliers, that difference is reasonable and rational, and not discriminatory, because it permits the Company to expand its small customer transportation program to all customers.²⁰

¹⁹ Some non-Customer Select transportation customers are not subject to daily metering and daily balancing, but these customers pay for full backup gas service, as would a sales customer, that reflects the backup costs incurred by the Company. Customer Select suppliers do not pay these full backup charges. Nicor Gas Exs. B, p. 6 (Gilmore Rebuttal) and C, p. 7 (Gilmore Surrebuttal).

²⁰ If the Commission rejects the OFO provision of Rider 16, other aspects of the Company's Customer Select proposal would have to be modified in order to avoid potential operational problems and cross-subsidies. These modifications are explained in Mr. Gilmore's rebuttal testimony, Nicor Gas Ex. B, at pp. 14-15. The Company believes that these alternatives are inferior to the OFO proposal, because they would limit the discretion and flexibility of suppliers and increase the overall cost incurred by Nicor Gas' customers. Nicor Gas Ex. B, p. 15 (Gilmore

Finally, while the Company could, in theory, correct any operational problems without resorting to OFOs by buying services or gas supply, this approach would inappropriately shift an increasing amount of costs to a decreasing number of sales customers, subsidizing Customer Select suppliers and their customers. Nicor Gas Ex. B, p. 13 (Gilmore Rebuttal). *This* result, and not the Company's OFO proposal, would be discriminatory and inequitable and should be rejected.

d. OFOs Support System Reliability and Proof of Unreliability
Should Not be Required.

Staff further claims that the Company has not demonstrated that it needs the ability to impose OFOs as part of the Customer Select program. Staff Init. Br. at 57. This argument is both shortsighted and incorrect, and should be rejected.

For all the reasons described above, the Company needs the tools, including OFOs for Customer Select suppliers, to manage its system in a best-cost and equitable manner. Staff's arguments simply ignore the Company's legitimate concerns regarding the operational risks of expanding unbundling to all remaining sales customers. Nicor Gas Ex. B, pp. 4-5 (Gilmore Rebuttal).

Staff dismisses the Company's illustration of its need to limit nominations (one kind of OFO) at its interconnect with Alliance Pipeline (see Nicor Ex. B, p. 7 (Gilmore Rebuttal), on the ground that it does not demonstrate a need for OFOs applicable to Customer Select suppliers because none of the suppliers affected by that limitation were Customer Select suppliers. Staff Init. Br. at 57. This reasoning is seriously flawed.

Rebuttal). On this point, Staff agrees; Staff witness Iannello also testified that the alternatives are inferior to the Company's OFO proposal. Staff Ex. 3.0, p. 16 (Iannello Rebuttal).

First, the Company does not dictate to Customer Select suppliers the pipelines and interconnections that they must use. Nicor Gas Ex. B, pp. 9, 14 (Gilmore Rebuttal). In fact, part of the benefit that transportation customers, including Customer Select customers, generally receive is that their suppliers are not required to path deliveries from a pipeline interconnection directly to the customer's burner tip, but may rely on Nicor Gas to provide service by displacement. This feature, plus the liquidity of the Nicor Gas city gate, means that any customer's gas could be at any pipeline interconnection at any time. It is therefore irrelevant that Customer Select suppliers were not actually affected by the restrictions imposed in December, 2000 on nominations from Alliance Pipeline, since they clearly could have been.²¹

Second, Staff's apparent implication that the Company should demonstrate that expansion of Customer Select and increased flexibility for its suppliers have directly caused operational problems before it would be appropriate to grant Nicor Gas the authority to issue OFOs is extremely shortsighted. Staff's approach would require crisis response. The Company's prudent planning, in contrast, would give it the tools it needs to avoid a crisis. See Nicor Gas Ex. B, p. 5 (Gilmore Rebuttal).

2. A Separate Proceeding to Consider OFOs is Not Warranted.

In its Initial Brief (p. 57), Staff argues that, if OFOs are needed, the Commission should address the matter in a separate proceeding and make the tariff provision applicable to all transportation customers. The Company strongly disagrees.

²¹ In fact, if the Commission rejects the Company's proposed OFO provision, the Company would likely have to limit the discretion of Customer Select suppliers regarding interconnecting pipelines, and require that they deliver a specified percentage of their supply, to be determined daily, off of Natural Gas Pipeline Company of America. Nicor Gas Ex. B, p. 14 (Gilmore Rebuttal).

For the reasons explained in subsection 1(c) above, it is reasonable and appropriate to apply OFOs to Customer Select suppliers without imposing them on all other suppliers. Moreover, the Company's existing services for transportation and sales customers were found by the Commission to be just and reasonable in 1996 in Docket No. 95-0219, and its Priority of Supply provision was approved in 1998 in Docket No. 97-0298. The Company is not proposing any changes to these services or provisions. Consequently, a general review of the Company's other transportation services is not necessary, would be inappropriate, and should not be a prerequisite for expansion of the Customer Select program. Nicor Gas Ex. C, p. 2 (Gilmore Surrebuttal).

3. Summary

Staff's criticisms of the Company's proposed OFO provisions of Rider 16 and the corresponding changes to Rider 6 are baseless and should be rejected. These criticisms fail to recognize the unique nature of the Customer Select program and the differences between suppliers' responsibilities under Customer Select and the Company's other transportation tariffs. In fact, the Company's proposed OFO provisions are so fundamental to the flexibility and predictability offered to suppliers under proposed Rider 16 that failure of the Commission to approve the OFO provisions would compel the Company to change the Customer Select program and limit supplier flexibility.

Because the Company's proposed OFO provisions are equitable and reasonable, and do not discriminate against Customer Select suppliers, and because the Company has proposed no change in its other transportation services, there is no basis for rejecting OFOs or for initiating a general review of the Company's transportation services prior to approving Rider 16.

C. Customer Select Offers Suppliers Sufficient and Reasonable Amounts of Flexibility in Their Use of Storage.

GCI argues that Customer Select suppliers have less control over their use of Nicor Gas system storage than does the Company, and asserts that suppliers should have unrestricted daily use of storage, within monthly parameters to be established by Nicor Gas. CUB/Cook Init. Br. at 34-35. This contention should be rejected.

First, as Mr. Gilmore explained, Customer Select suppliers presently have significant flexibility in daily deliveries due to storage. Under Rider 16, suppliers are afforded a daily delivery range that may be as much as 15 percent, plus or minus (for a total range of 30 percent) of their Required Daily Delivery. Nicor Gas Ex. A, p. 9. As a practical matter, this 30 percent flexibility *is* storage, since Nicor Gas will use its system storage capability to balance the system when Customer Select suppliers choose to exercise their delivery flexibility. Nicor Gas Ex. B, p. 2 (Gilmore Rebuttal).

Second, storage flexibility is what enables the Company to provide Suppliers with considerable certainty in their delivery nominations. Under Rider 16, Nicor Gas gives all Suppliers their Required Daily Delivery nominations more than 24 hours prior to the start of the gas day. These nominations are not later subject to change to reflect actual weather, future weather forecasts, actual sendout, actual storage activity, and other changes that occur during the 48 hours between the issuance of the nomination and the end of the gas day. *Id.*

Third, GCI's claim that Nicor Gas can use its storage to meet up to 70 percent of its customers' requirements is misleading. Nicor Gas' storage fields and contract storage services are not operationally or contractually capable of providing a swing from 0 to their full rated capacity from one day to the next, except in the most extreme conditions. Nicor Gas Ex. C, pp.

7-8 (Gilmore Surrebuttal). In fact, the Company's use of storage is constrained by its need to manage both its on-system aquifer fields and its purchased storage services on a daily, monthly, seasonal, and annual basis to ensure that the rated capacity is available under design day conditions, contractual limits are not violated, and the operational viability of the storage fields is maintained. *Id.*

In short, Suppliers receive both flexibility in daily deliveries and predictability in their daily delivery volumes precisely because Nicor Gas uses system storage to make up for differences between the volumes delivered by Suppliers and usage by Customer Select customers. Nicor Gas Ex. B, p. 2 (Gilmore Rebuttal). Giving Customer Select suppliers more storage flexibility, as GCI suggests, would place at greater risk Nicor Gas' ability to operate its system effectively, and should be rejected. Nicor Gas Ex. C, p. 8 (Gilmore Surrebuttal).

D. Standards of Conduct.

Rider 16 contains "Standards of Conduct" for suppliers. As filed in this proceeding, Rider 16 contains three new Standards of Conduct that were not in effect during the Customer Select pilot program. Nicor Gas Ex. D, Schedule AEH-4, p. 11 of 12. Of these three new standards, (e), (l) and (m), Staff objects to (l) only, because it conflicts with Staff's position on single billing by suppliers.²² Staff Init. Br. at 58. For the reasons explained in Section II.A above and in the Company's Initial Brief, pp. 22-25, Staff's position on single billing by suppliers should be rejected and section (l) of the Standards of Conduct should be approved.

²² Staff also supports or has no objection to revised language in Standard (g). Staff Init. Br. at 58-59.

In its testimony and Initial Brief, the Company also advocates addition of a new section (p), which would permit the Company to disqualify a supplier or administer a reparation, imposed on the supplier by the Commission, if the supplier is found by the Commission or a court to be in breach of its contract with a customer. Nicor Gas Ex. E, p. 14 (Harms Rebuttal); Nicor Gas Init. Br. at 21. Staff objects to inclusion of this standard. Staff Init. Br. at 58. The Company believes that this standard is important, however, in order to protect customers from defaults by Customer Select suppliers, and should be approved.

Staff and the Company both support the addition of a final statement in the Standards of Conduct noting that failure to comply with the Standards of Conduct is a basis for removal of a supplier from the Customer Select program, and indicating that any party alleging improper enforcement of the Standards of Conduct can file a complaint with the Commission. Staff Init. Br. at 58-59; Nicor Gas Init. Br. at 21.

Finally, Staff advocates inclusion of a provision in the Standards of Conduct containing disclosures regarding the joint use of a name and logo by a gas utility and an affiliate.²³ Staff Init. Br. at 59-60. The Company strenuously opposes inclusion of any such disclaimer, for the reasons explained in Section IV.A of this Brief, and in the Company's comments in the gas affiliate rulemaking proceeding, Docket No. 00-0586, where this issue is pending. In any event,

²³ It is not clear whether Staff (and GCI, who proposed the disclosure language) intend that it be applicable to Nicor Gas and its affiliates alone, to all gas utility affiliates that are suppliers, or to all gas and *electric* utility affiliates that are suppliers. To the extent that they would apply it to electric utility affiliates, it is also inconsistent with the Commission's electric affiliate rule, 83 Ill. Adm. Code 450.25(b), which was recently upheld on appeal. *Illinois Power Co. v. Commerce Comm'n*, 316 Ill.App.3d 254, 738 N.E.2d 196 (5th Dist. 2000).

it would be highly inappropriate to include a disclosure of any sort before a final resolution of the issue is reached by the Commission in the generic rulemaking proceeding.

For all of the foregoing reasons, Rider 16 should be approved by the Commission in the form contained in Nicor Gas Ex. D, Schedule AEH-4 (Harms Direct), subject to the three changes set forth in full in the Company's Initial Brief, pp. 20-21.

IV. CUSTOMER PROTECTION ISSUES

A. Use of Corporate Logo

A significant portion of this proceeding has been devoted to the issue of alleged customer confusion related to Nicor Energy's use of the Nicor logo, and proposed mechanisms to reduce any such customer confusion. *See e.g.*, CUB/Cook County Init. Br. at 16-22; The People Init. Br. at 16-18. As the Company explained in its Initial Brief (at 37-38), these issues are currently pending before the Commission in Docket No. 00-0586 ("Gas Affiliate Docket"), and should not be litigated a second time within the context of this proceeding.²⁴ Nicor Gas' policy and legal arguments on these issues are a matter of record in the Gas Affiliate Docket. Despite the

²⁴ CUB and Cook County insinuate that Nicor Gas is taking an inconsistent position in this proceeding by arguing that issues raised by GCI witness Ms. Alexander concerning consumer protection are more properly the subject of a Commission rulemaking or legislative proceeding, while arguing in the Gas Affiliate Docket that the Commission lacks statutory authority to implement gas affiliate rules. CUB/Cook County Init. Br. at 4. This argument is baseless for several reasons. *First*, Nicor Gas' position in this proceeding is that *all* of the broad consumer protection issues raised by Ms. Alexander -- not just affiliate rules regarding joint marketing -- are more properly the subject of a generic proceeding. Nicor Gas Init. Br. at 38. *Second*, Nicor Gas' position in this proceeding does not bar Nicor Gas from arguing the merits of Commission jurisdiction in the Gas Affiliate Docket. *Third*, Illinois law expressly provides that generic issues are the proper subject of generic rulemakings. 220 ILCS 5/10-101. *Fourth*, CUB itself *agrees* that Ms. Alexander's recommendations "are broad concerns that should be addressed in a *generic* manner by either the Commission, the legislature or both." CUB Ex. 2.0, p. 1 (Cohen Rebuttal) (Emphasis added).

Company's position on this issue, it is nevertheless necessary to at least briefly respond to the assertions set forth in the Initial Briefs of CUB/Cook County and the People.

GCI argues that Nicor Gas has "made every conceivable effort" to market Nicor Gas and Nicor Energy as one company. CUB/Cook County, Init. Br. at 17. In support of this argument, GCI places a great deal of significance on the fact that when a person calls Nicor Gas, they get a recording that thanks the customer for calling "the Energy Companies of Nicor." *Id.* No one disputes that the phone recording introduced by CUB says this. However, the Commission should note that, at the hearing, counsel for CUB specifically identified the number that CUB called as 630-983-8676. Tr. 158. This is the Nicor Gas general number located at the East-West Tollway and Route 59. Customers who wish to contact Nicor Energy, however, must call a different number. The record clearly shows that, *on the face of* its correspondence with customers, Nicor Energy lists a different contact phone number, 630-435-6400, and a different address. Hearing Examiners' Ex. 1 (Jan. 8, 1999 Letter from Thomas R. Modaff). In addition, the text of Nicor Energy's customer correspondence unambiguously states

At anytime, if you have a question or problem, please call our Customer Care Department at 888-642-6797. We are open 24-hours a day, 7 days a week for your convenience.

Id. When a customer calls either the 630-435-6400 or 888-642-6797 number, that customer receives a recording that says "thank you for calling Nicor Energy."²⁵ Thus, contrary to CUB and Cook County's claims, Nicor Gas and Nicor Energy do not attempt to confuse customers.

²⁵ The Company invites the Commission to call either of these phone numbers and respectfully requests that the Commission take official notice of the fact that people calling these numbers receive a recording thanking them for calling Nicor Energy.

Furthermore, as discussed in Nicor Gas' Initial Brief (at 39), while GCI argues that Nicor Energy's use of the corporate name "Nicor" leads to customer confusion, the Commission has recognized that prohibiting an affiliate from using a corporate name would clearly be deceptive. In Docket Nos. 98-0013 and 98-0035 (consol.), the Commission considered this issue in the context of a rulemaking concerning electric utilities and their affiliates. In that proceeding, the Commission adopted Section 450.25(b), which expressly allows an electric utility affiliate that supplies retail electricity to use the corporate name and logo of its affiliated electric utility or electric utility holding company. 83 Ill. Admin. Code § 450.25(b). In adopting this rule, the Commission found that:

[T]he Commission believes it would be doing a tremendous disservice to consumers by essentially requiring affiliated interests in competition with ARES to masquerade as non-affiliated entities, when they are in fact affiliated.

The People of Cook County, et al., Docket Nos. 98-0013, 98-0035 (consol.), 1998 Ill. PUC LEXIS 777, *24. Thus, the taped conversation of the Nicor Energy confirmation call with Lillian Sasso ("Sasso tape") offered by CUB and Cook County (CUB/Cook County Init. Br. at 18), does not show that the Company makes "every conceivable effort" to market Nicor Gas and Nicor Energy as a single company. Rather, the Sasso tape merely reflects the fact that Nicor Energy is not required to hide the fact that it is affiliated with Nicor Gas. Indeed, to hide this fact would constitute a bald-faced lie.

B. Customer Education Workshops

Staff recommends that Nicor Gas conduct customer education workshops in an attempt to determine the appropriate focus of Nicor Gas' customer education efforts. Staff Init. Br. at 60. Nicor Gas agrees, and would be willing to host such a workshop at the conclusion of this proceeding. Nicor Gas Ex. F, p. 17 (Harms Surrebuttal). Despite Nicor Gas' willingness to

work with the parties on the issue of customer education, however, the People claim that Nicor Gas “has had very little response” to consumer issues. The People, Init. Br. at 10. This is simply wrong. Staff witness Iannello testified that “[b]ased on the cooperation that Nicor has exhibited with Staff in developing the Customer Select Pilot Program, I would expect Nicor to be very receptive to input from outside parties.” Staff Ex. 3.0, p. 18 (Iannello Rebuttal).

In addition, the People fail to recognize that positions advocated by Nicor Gas in other forums would, if adopted, alleviate many of the customer protection issues raised in this proceeding. For example, in the Gas Affiliate Docket, Nicor Gas supports a rule that would prohibit joint advertising and marketing between gas utilities and their affiliates in competition with alternative gas suppliers. Additionally, and as noted above, Nicor Gas is currently supporting legislation before the General Assembly that would allow the Commission to regulate gas suppliers. Accordingly, it is clear that Nicor Gas has, in fact, been quite receptive to consumer protection issues within this proceeding and others.

C. The Commission’s Lack Of Jurisdiction To Regulate Suppliers

CUB and Cook County also argue that the Commission should not allow Nicor Gas to expand Customer Select because the Commission does not have statutory jurisdiction to regulate gas suppliers, and the Standards of Conduct contained in Rider 16 are not sufficient to ensure customer protection. CUB/Cook County Init. Br. at 26-28. Instead, CUB and Cook County argue that Nicor Gas has “put itself in the role of regulator . . . where it is regulating its affiliate Nicor Energy” and “Nicor Energy’s competitors.” CUB/Cook County Init. Br. at 26-27. This argument is baseless. Nicor Gas agrees with CUB and Cook County’s position (*Id.* at 30) that the Commission should seek statutory jurisdiction from the General Assembly to regulate gas suppliers. In fact, as stated above, Nicor Gas *supports* the Commission in this endeavor.

Obviously, if CUB's and Cook County's characterizations that Nicor Gas is attempting to single-handedly regulate gas suppliers were true (which they are not), Nicor Gas would not support legislation granting the Commission regulatory authority.

Further, CUB and Cook County claim Nicor Gas failed to take sufficient action against Santanna Energy Services ("Santanna") when it declared a "Force Majeure" and moved customers from a fixed rate to a market rate. According to CUB and Cook County, because the Commission lacks enforcement authority over gas suppliers such as Santanna, Customer Select should not be expanded because customers would not be adequately protected. CUB/Cook County Init. Br. at 28-30. Both of these assertions are incorrect.

First, while CUB and Cook County criticize Nicor Gas for not taking action against Santanna, Nicor Gas' decision not to unilaterally terminate Santanna's participation in Customer Select was legitimate for three reasons. One, while Santanna's contract with its customers did not contain a Force Majeure clause, there is a legitimate branch of that legal doctrine -- commercial impracticability -- that Santanna presumably would have relied upon. Two, given the fact that Santanna had a colorable legal defense, Nicor Gas did not want to unilaterally remove Santanna from Customer Select. Indeed, if Nicor Gas had removed Santanna, Nicor Gas would likely have been accused of helping Nicor Energy by removing a competitor. And, three, it was the Company's intention to wait for someone to pursue Santanna before the Commission or Courts in order to have an objective opinion as to whether Santanna, as a matter of law, wronged its customers.

Second, despite CUB's and Cook County's claims that customers are not adequately protected under Customer Select because the pursuit of a gas supplier in court would be cost prohibitive (CUB/Cook County Init Br. at 27), a class action complaint was recently filed against

Santanna by its customers. *Bell Enterprises Venture and HTP America, Inc. v. Santanna Natural Gas Corp.*, # 01-C-2212 (N.D. Ill. 3/28/01).

D. Uniform Price Disclosure

GCI assert that the Commission should require Nicor Gas and Customer Select suppliers to provide uniform price disclosure so that customers may make comparisons between competing offers. CUB/Cook County Init. Br. at 42; The People Init. Br. at 10-15. Pursuant to GCI's recommendations, such price disclosure would be required for fixed and variable rates, and variable rates tied to an external index. *Id.* Nicor Gas opposes GCI's proposal. As Staff correctly noted in its Initial Brief (at 67), "[t]he fundamental differences between fixed prices, variable prices and the utility's PGA charge make 'apples to apples' comparison of prices impossible. There is no way of informing customers exactly what they will pay for natural gas if they choose a variable price offer or take service from the utility." Nicor Gas agrees with Staff that if the Company and suppliers are forced to arrive at some "uniform" price disclosure, customers could be potentially misled about the prices they should expect to pay. For these reasons, the Commission should decline to impose a uniform price disclosure requirement.

E. Other Issues

A number of other issues were addressed briefly in testimony and in the initial briefs of the parties, including use of a Letter of Agency document for enrolling customers, disclosure of a customer's credit information, and acknowledgement of enrollment by a supplier. The Company's position on these matters remains as stated in its testimony and Initial Brief. *See* Nicor Gas Init. Br. at 36 (Letter of Agency, disclosure of credit information), 25-26 (acknowledgement of enrollment).

V. **CONCLUSION**

For the foregoing reasons, and for the reasons set forth in the Company's Initial Brief, the Commission should approve Nicor Gas' Customer Select tariffs to become effective August 1, 2001 for implementation in March 2002 subject only to the four modifications specified by Nicor Gas at pages 20-21 of its Initial Brief.

Respectfully submitted,

NORTHERN ILLINOIS GAS COMPANY
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April 12, 2001

CERTIFICATE OF SERVICE

I, Angela D. O'Brien, hereby certify that I have served the Reply Brief Of Northern Illinois Gas Company and proposed draft order on the attached service list by Overnight Courier, and by electronic mail on April 12, 2001.

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